

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

IBA/877/2019

Under Section 7 r/w Rule 4 of the IBC, 2016

In the matter of M/s. Core Indo Ispat Private Limited

M/s. CFM Asset Reconstruction Private Limited

---Financial Creditor

V/s

M/s. Core Indo Ispat Private Limited

---Corporate Debtor

Order delivered on: 05.10.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor : *Shri. P. Elayaras Kumar, Advocate*

Shri. K. Ramesh, Advocate

For M/s. Ramalingam & Associates

For the Corporate Debtor : *Shri. P. Jesus Moris Ravi, Advocate*

Shri. G. George Raja Selvan, Advocate

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in Open Court on: 04.10.2019

It is an Insolvency and Bankruptcy Application (IBA) filed u/s 7

of the Insolvency and Bankruptcy Code, 2016 by Financial Creditor

namely, M/s. CFM Asset Reconstruction Private Limited for

initiation of Corporate Insolvency Resolution Process ("CIRP")



against the Corporate Debtor namely M/s. Core Indo Ispat Private Limited on the ground the Corporate Debtor defaulted in making repayment of ₹25,43,16,355.85 as on 03.12.2018.

2. On perusal of this case, it appears that the Corporate Debtor on 25.08.2014 by executed Master General Terms Agreement, Multi-Facility Loan Agreement, Agreement for Foreign Exchange Transactions Agreement, Agreement for Forward Contract Limited and Deed of Hypothecation in favour of Indus Ind Bank. In addition to the documents executed above, the Promoters-Directors of this debtor company namely, Mr. Ashish K. Nevatia, Mrs. Nidhi Nevatia and Mr. Arun Kumar executed Letter of Continuing Guarantee on 25.08.2014 in favour of Indus Ind Bank to discharge its liability in the event Corporate Debtor defaulted in repaying the loan. The Promoter-Directors of the debtor company namely, Mr. Ashish K. Nevatia, Mrs. Nidhi Nevatia and Mr. Arun Kumar on 24.10.2014 executed Memorandum of Deposit of Title Deeds in favour of Indus Ind Bank Limited and the charge was registered on the file of

Registrar of Chennai Central, Joint-II, Chennai.



3. Looking at the documents and charges created against the Corporate Debtor and the properties of the Promoters-Directors, Indus Ind Bank sanctioned credit facilities for a total sum of ₹25,00,00,000 (Rupees Twenty Five Crores) for the purpose of working capital limit. On the mortgage over the immovable properties of the Promoters-Directors/Guarantors on the file of RoC, this charge was registered on 25.09.2014. When the Corporate Debtor failed to repay the loan as agreed between the Creditor Bank and the Corporate Debtor, the Indus Ind Bank on 04.05.2018 issued demand notice to the Corporate Debtor for a sum of ₹23,42,42,946 (Rupees Twenty Three Crores Forty Two Lakhs, Forty Two Thousand Nine Hundred and Forty Six) as on 03.05.2018. When the Corporate Debtor failed and the payment became irregular, this account was classified as **“Non-Performing Asset”** on 30.09.2016. When the Corporate Debtor failed to make repayment even after receipt of demand notice, this debt was assigned to the Applicant. And the Applicant, to prove that assignment has been made in its favour, has filed Assignment Agreement dated 12.07.2018 reflecting



Indus Ind Bank Limited assigning various debts across India to this CFM Asset Reconstruction Private Limited and also another assignment deed dated 14.09.2018 specifically dealing with assigning this debt to this applicant. By virtue of this assignment, this Applicant filed OA/929/2018 against the Corporate Debtor and the Guarantors on 03.12.2018 seeking for a recovery of a sum of ₹25,43,16,355.85 before the Hon'ble Debt Recovery Tribunal-II, Chennai.

4. Since this loan was availed by this Corporate Debtor from Indus Ind Bank Limited, the Applicant has shown various dates on which this loan was either acknowledged or part-payment made by the Corporate Debtor to reflect that this debt is within limitation as on the date of filing this case.

5. As against this factual scenario aforementioned, the Corporate Debtor counsel has raised two contentions. One is, the Assignment Deed executed by the Indus Ind Bank in favour of this applicant dated 12.07.2018 and 14.09.2018 are invalid. Second is, this debt is barred by limitation because the date of default mentioned in



the notice dated 04.05.2018 classifying this account as Non-Performing Asset is as on 30.09.2016.

6. As to first point, it is pertinent to mention that assignment takes place in between the assignor and assignee, there is no pre-requisite under law to intimate to the Debtor about assigning a debt by the assignor to the assignee. It is also not mentioned anywhere under law that unless assignment has been intimated to the Corporate Debtor, such assignment will not get valid.

7. Here, the argument of the applicant counsel is that assignment in favour of this applicant was communicated to the Corporate Debtor on 11.09.2018 i.e. before execution of second assignment deed in favour of this assignee. On perusal, we have come to notice that earlier assignment dated 12.07.2018 was executed by Indus Ind Bank assigning various debts across India, for mutation of assignment of this debt in the records of the Registering Authority, Indus Ind Bank, on 14.09.2018, again executed another assignment deed assigning this specific debt in favour of this assignee. To show that these two assignments are relating to one



transaction, in the second Assignment Deed dated 14.09.2018, earlier Assignment deed dated 12.07.2019 has also been mentioned. Either by execution of two Assignment Deeds or by mentioning the applicant has notified earlier Assignment Deed to the corporate debtor, according to our understanding, intimation of assignment in favour of the assignment not being prerequisite to the validity of it, date of intimation to the corporate debtor will not invalidate the assignment. Moreover, no prohibition has been envisaged under law against executing two Assignment Deeds. Besides this, validity of Assignment normally be questioned by the Assignor as and when any dispute comes between the Assignor and the Assignee. However, neither of these assignment deeds are hit by any provision of law, we are therefore of the view that there is no merit in the argument of Corporate Debtor counsel.

8. As to second point is concerned, whether account was classified as Non-Performing Asset on 30.09.2016 or intimation of such classification on subsequent date will not change the historical facts of the respective case. It is not the case of this Corporate Debtor



that this Corporate Debtor has been regularly paying and in spite of making regular payments, this applicant has shown this account as Non-Performing Asset. As long as there is no rebuttal as to classifying it as Non-Performing Asset, it will not make any difference to the historical facts that are very much evident on the face of the record. Moreover, there is no rule or law stating that claim has to be made within three years from the date of default. The point relevant for filing claim before any court of law is whether debtor committed default in repaying and whether such claim as on the date is within limitation or not.

9. Against second point, the applicant counsel has mentioned that this Corporate Debtor has made part-payments – ₹30,00,000/- on 25.07.2016, ₹20,000/- on 17.11.2016, ₹30,00,212 on 29.12.2017, ₹40,08,000 on 29.12.2017, ₹17,62,550/- on 29.12.2017. Upon seeing such part-payments showing that this debt is within limitation from 24.10.2014 till the date of filing this case on 04.07.2019, we have not found any merit in the argument of the Corporate Debtor counsel saying that this debt is barred by limitation.



10. On hearing the submissions of either side, another point has come up in between saying that Applicant has already filed OA against the Guarantors and the Corporate Debtor before Debt Recovery Tribunal-II, Chennai for the same claim. We are of the view that filing such claim before DRT will not have any bearing on this proceeding initiated under Insolvency and Bankruptcy Code because this point has already been dealt with by Hon'ble Supreme Court of India in between *State Bank of India vs. V. Ramakrishnan and Another (2018) 17 SCC 394*.

11. In view of the aforesaid discussion, the applicant having proved existence of debt as well as default, we hereby admit this application by appointing Mr. Ramachandran Subramanian as Interim Resolution Professional (IRP) looking at the consent given by him with directions as follows:

I. That Moratorium is hereby declared prohibiting all of the following actions, namely,

a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including



execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

II. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.




- IV. That the order of moratorium shall have effect from **04.10.2019** till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- VI. That this Bench hereby appoints **Mr. Ramachandran Subramanian**, having Registration Number [IBBI/IPA-001/IP-P001440/2018-19/12136], No. 29, Raju Naicken Street, West Mambalam, Chennai-600033, Email: subraman267@yahoo.com, Mobile No: 9790721417 as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.



12. Accordingly, this Petition is **admitted**.

13. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.


(S. VIJAYARAGHAVAN)
MEMBER (Technical)


(B. S.V. PRAKASH KUMAR)
MEMBER (Judicial)

KNP/TJS



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